

## REMARKS

This is in response to the Office Action dated July 17, 200 (the "Action").

With respect to the objection to the drawings, it is noted that formal drawings were submitted on August 8, 2008. The formal drawings include reference number "16a" to identify the baffle, which was shown in the original drawings and described in the specification. Accordingly, the addition of reference number "16a" does not add new matter to the application, and Applicant requests that the objections to the drawings be withdrawn.

Claim 2-8 and 12-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.K. Publication No. 2298073 to O'Neill ("O'Neill") in view of U.S. Patent No. 6, 564,485 to Hess ("Hess"), U.K. Publication No. 2372807 to O'Neill ("O'Neill-2") and Japanese Patent No. JP06290762 to Fukue ("Fukue"). Claim 5 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess, and UK Publication No. 2276444A to McDonald ("McDonald"). Claim 9 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess and U.S. Patent No. 2,984,032 to Cornell ("Cornell") and U.S. Patent No. 6,269,567 to MacPherson ("MacPherson"). Claim 17 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess and U.S. Patent No. 3,742,189 to Conroy ("Conroy"). Claim 19 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess and in view of Cornell and MacPherson. Claim 10 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Cornell. Claim 18 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Cornell and Conroy. Claim 20 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Cornell and MacPherson.

Reconsideration of the rejections under 35 U.S.C. 103(a) is respectfully requested for the reasons that follow.

### **I. The Section 102/103 Rejections**

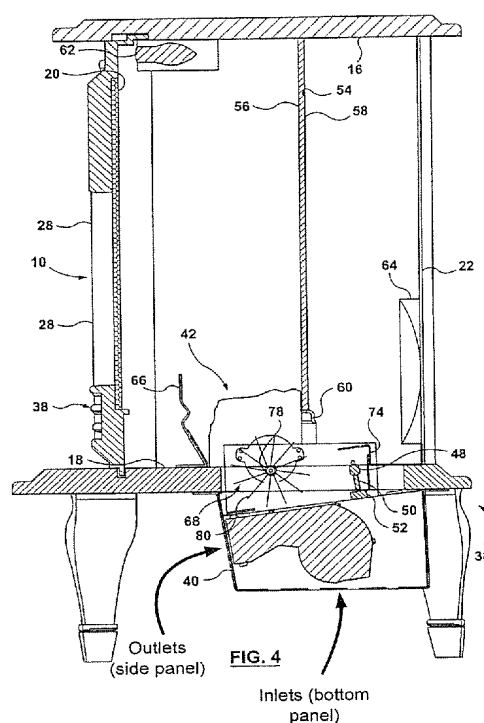
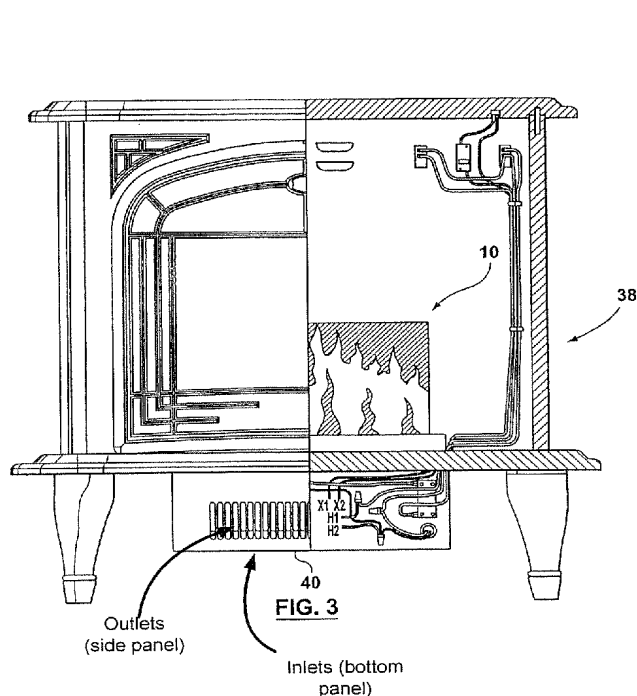
#### **A. Independent Claim 2**

Claim 2 recites a flame effect electric fire including:

- i) a housing having at least first and second opposing external side panels, a top external panel and an opposing bottom underside external panel, wherein the first side panel of the housing is adapted to be mounted on a substantially plane wall;
  - ii) heating means disposed in the housing operative to draw air into the housing, heat the air and expel the heated air; and
  - iii) a flame simulating assembly mounted in the housing and comprising:
    - (a) a light source;
    - (b) a viewing screen on the second side panel capable of diffusing and transmitting light;
    - (c) a rear reflecting means disposed behind the viewing screen;
- and
- (d) means for producing moving beams of light, wherein the light source is disposed below the reflecting means and behind the viewing screen, the means for producing moving beams of light is disposed in front of the light source and below the screen and light from the light source is reflected by the means for producing moving beams of light onto the reflecting means and is reflected by the reflecting means onto the screen to produce a perceptible image viewable on the screen, and wherein the heating means expels air in a generally vertically downward direction through an air expulsion aperture in the underside external panel of the housing.

The Action concedes that O'Neill does not disclose that the heating means expels air in a generally vertically downwardly direction through an air expulsion aperture in an underside panel of the housing, or that the underside panel is an opposing bottom underside external panel to a top external panel. However, the Action identifies "vents" on the bottom of the stove heater unit **40** of Hess, and concludes that Hess expels air in a generally vertically downwardly direction through the "vents." In response, a Declaration under Rule 132 by Kristoffer Hess, the sole inventor of Hess, is filed herewith ("Hess Declaration").

As stated in the Hess Declaration, the "vents" identified on page 8 of the Action are air inlets. The outlets of the stove heater unit **40** are located on the side of the unit **40** so that heated air is expelled in a generally forward direction. See the Hess Declaration, paragraph 4. The inlets and outlets of the stove heater unit **40** of Hess are therefore located on different panels of the unit **40**. See the Hess Declaration, paragraph 5 and **Figures 3-4** of Hess, reproduced below with annotation indicating the inlets and outlets of the heater unit **40**.



Accordingly, Hess does not disclose a heating means that "expels air in a generally vertically downward direction through an air expulsion aperture in the underside external panel of the housing" as recited in Claim 2.

For at least these reasons, the recitations of Claim 2 are not taught or suggested by the art cited in the Action. Claims 3-9, 12-17 and 19 depend indirectly or directly from Claim 2 and are patentable over the cited are very least the reasons discussed above. Accordingly, Applicant requests that the rejections under Section 103 be withdrawn.

In addition, various claims depending from Claim 2 are separately patentable for at least the reasons discussed below.

#### **B. Dependent Claim 9**

Claim 9 depends indirectly from Claim 2, and is therefore patentable for least the reasons discussed with respect to Claim 2. In addition, Claim 9 is separately patentable for at least the reasons discussed below.

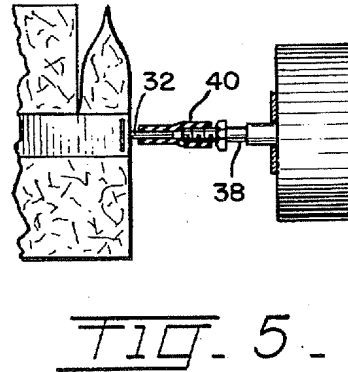
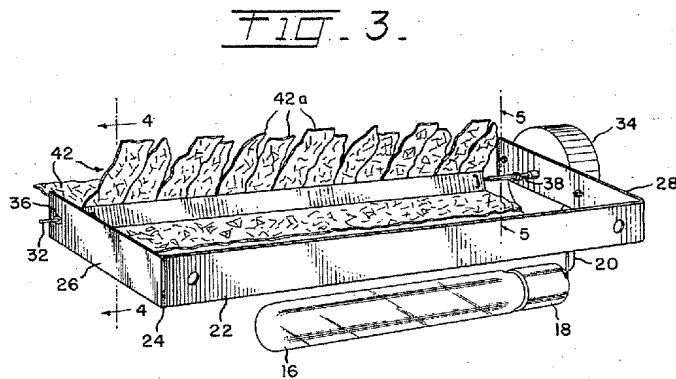
Claim 9 stands rejected under Section 103 as being unpatentable over O'Neill in view of Hess, Cornell and MacPherson. In particular, Claim 9 recites a shaft that

is driveably connected at a first end thereof via a flexible bushing to a drive means operative to rotate the shaft and is releasably retained at a second end thereof in a supporting bracket, the supporting bracket having a slot therein adjacent the second end of the shaft, the first end of the shaft being configured to be retained by the flexible bushing when the second end is released from the supporting bracket via the slot in the supporting bracket, and the shaft being displaceable from its operative position on release of its second end by flexure of the flexible bushing, thereby to permit access to the light source.

Accordingly, Claim 9 recites that the first end of the shaft is configured to be retained by the flexible bushing when the second end is released from the supporting bracket and that the second end is released via a slot in the supporting bracket.

The Action concedes that the above-emphasized recitations of Claim 9 are not disclosed by O'Neill or Hess. The Action takes the position that these recitations are disclosed by Cornell and MacPherson.

Applicant submits that Cornell does not disclose or render obvious that the first end of the shaft is configured to be retained by a flexible bushing when the second end is released from the supporting bracket or that the second end is released via a slot in the supporting bracket for at least the reasons discussed in Applicant's paper submitted April 7, 2008. As discussed in Applicant's paper submitted April 7, 2008, the element **40** of Cornell is not equivalent to the flexible bushing recited in Claim 9 because the opposite end of the shaft **32** clearly is not released. Cornell states that "the motor shaft **38** is coupled to the driven shaft **32** by a resilient sleeve **40** of rubber or the like, making it an easy matter to disconnect the shaft when desired without the use of any tools." See Cornell col. 2, lines 40-44. Thus, Cornell does not disclose that the first end of the shaft is configured to be retained by the flexible bushing when the second end is released, e.g., from a slot in the supporting bracket as recited in Claim 9.



MacPherson is merely cited as disclosing a slot, and as such, does not provide the missing elements of Cornell discussed above.

For at least these reasons, Applicants submit that Claim 9 is separately patentable and respectfully requests an indication of same.

### C. Claim 19

Claim 19 depends from Claim 2 and is therefore patentable for at least the reasons discussed with respect to Claim 2 above. Applicant submits that Claim 19 is separately patentable for at least the following reasons.

Claim 19 recites an air intake aperture in the underside external panel of the housing, and that the heating means is configured to draw air into the housing through the air intake aperture in the underside external panel of the housing and to expel the heated air through the air expulsion aperture in the underside external panel of the housing. As stated in the Hess Declaration, the "vents" identified on page 8 of the Action are air inlets. The outlets of the stove heater unit **40** are located on the side of the unit **40** so that heated air is expelled in a generally forward direction. The inlets and outlets of the stove heater unit **40** of Hess are therefore located on different panels of the unit **40**. In contrast, Claim 19 recites that the air intake aperture and the air expulsion aperture are both in the underside external panel of the housing.

For at least these reasons, Applicant submits that Claim 19 is separately patentable and respectfully requests an indication of same.

**D. Independent Claim 10**

Claim 10 recited an apparatus for producing a visual effect for simulating flames including:

- i) a light source;
- ii) a simulated fuel bed;
- iii) a viewing screen mounted about the fuel bed capable of diffusing and transmitting light and comprising a partially reflective front surface whereby an image of the fuel bed may be seen in the viewing screen;
- iv) means for producing moving beams of light, wherein:
  - a) light from the light source is reflected by the means for producing moving beams of light directly and/or indirectly onto the viewing screen to produce a perceptible image viewable on the screen; and
  - b) the means for producing moving beams of light comprises a shaft mounted for rotation about its axis and having a reflective material mounted thereon for reflecting light from the light source, the shaft is driveably connected at a first end thereof via a flexible bushing to a drive means operative to rotate the shaft and is releasably retained at a second end thereof in a supporting bracket, the first end of the shaft being configured to be retained by the flexible bushing when the second end is released from the supporting bracket and the shaft being displaceable from its operative position on release of its second end by flexure of the flexible bushing, thereby to permit access to the light source.

As noted above, Claim 10 was rejected in the Action under § 103 as being obvious over O'Neill in view of Cornell.

Applicant submits that O'Neill and/or Cornell do not disclose or render obvious at least the above-emphasized recitations of Claim 10 for at least the reasons discussed in Applicant's paper submitted April 7, 2008. Cornell discusses that one end of the shaft **32** is journaled in a bearing **36**, and the other end includes a resilient sleeve **40**. As discussed above with respect to Claim 9, Cornell discusses disconnecting the shaft **32** at the end having the resilient sleeve **40**. See Cornell, col. 2, lines 40-44.

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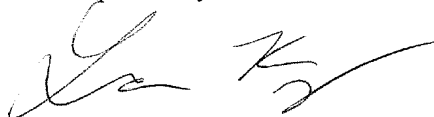
In contrast, Claim 10 recites that the first end of the shaft is configured to be retained by the flexible bushing. Because Cornell states that the resilient sleeve **40** (which the Action states is analogous to the claimed flexible cushioning) is designed to make it “an easy matter to disconnect the shaft” at the resilient sleeve **40**, there is no apparent reason why one of ordinary skill would modify Cornell to disconnect the shaft **32** at the bearing **36**.

For at least these reasons, Applicant submits that the recitations of Claim 10 are not taught or suggested by O'Neill and/or Cornell. Claims 18 and 20 depend from Claim 10 and are likewise patentable. Accordingly, Applicant requests that the rejection of Claims 10, 18 and 20 under § 103 be withdrawn.

#### CONCLUSION

Accordingly, Applicant submits that the present application is in condition for allowance and the same is earnestly solicited.

Respectfully submitted,



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#### CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on September 18, 2008.

Signature: \_\_\_\_\_

Susan E. Freedman

